

AG Contract No.: KR05-0381TRN  
ADOT ECS File No.: JPA 04-133  
Project No.: TEA-191-B (001) A  
Project: U.S - 191 Sidewalks  
Section: Discovery Park Blvd ~ US 70  
(MP 118.9 ~ MP 121)  
TRACS No.: H5744 S1D/01L  
H5744 01D/01C  
Budget Source Item No.: 75306

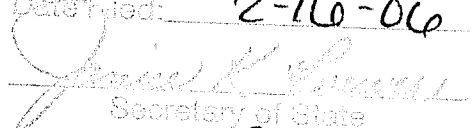

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF SAFFORD

THIS AGREEMENT is entered into this date February 16, 2006, pursuant to Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SAFFORD, ARIZONA acting by and through its MAYOR and CITY COUNCIL (the "CITY").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes §§ 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 11-952 and City of Safford Municipal Code Section 2.08.010 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, twelve (12) eligible categories of transportation enhancement activities.
4. The State and the City are in mutual agreement to design and construct a multi-use pathway and sidewalk on the west side of U.S. 191, beginning at Milepost (MP) 118.9 (Discovery Park Boulevard) and ending at MP 121.1 (to the Junction of U.S. 191 with US Highway 70), hereinafter referred to as the "Project". The Project consist of a 10 foot wide asphalt multi-use path way from Discovery Park Boulevard to Station 1520; a 6 foot wide concrete sidewalk begins at Station 1520 that is approximately 2000 feet south of 20<sup>th</sup> Street; and the installation of 15 irrigation vaults capped with covers, at a total estimated cost of \$519,000.00. The State will be the lead agency to design and construct the Project using State and Federal funding. The City will be responsible to provide maintenance to the Project, including the irrigation vaults capped with covers. The responsibility of each of the parties is defined in this Agreement under Section II. Scope of Work.

NO. 28016  
Filed with the Secretary of State  
Date Filed: 2-16-06  
  
Secretary of State  
By: 

The estimated costs are as follows:

**Design & Construction - TRACS No.: H5744 01D / 01C**

Estimated Federal-aid funds @ 94.3% of \$519,000.00

\$489,417.00

Estimated State fund @ 5.7% of \$519,000.00

\$ 29,583.00

**Estimated Total Project Costs**

**\*\$519,000.00**

**\*(Includes 15% CE and project contingencies)**

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State shall:

a. Prepare to State standards, design plan, specifications and estimates for the Project and submit them to the City for comment as appropriate. Construct the Project using the State and Federal funds.

b. Submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding.

c. Construct the Project approved by FHWA, if such funds are available for construction. With the aid and consent of the FHWA, proceed to advertise for, receive and open bids, and subject to the concurrence of the FHWA, enter into a contract with a firm to whom the award is made for the construction of the Project. Such project is to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

e. Not be obligated to maintain said Project including the irrigation vaults capped with covers, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

g. Allow the City rights-of-entry to the State's right-of-way for the City to perform all planned maintenance work, upon completion of the Project

h. Upon completion of the Project and after receipt of the City's request(s), grant the City an "Encroachment Permit" through the State's Safford District Permits Office to allow the City rights-of-entry onto the State's right-of-way for all planned maintenance works of the Project.

2. The City shall:

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. Upon completion and acceptance of the Project, provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance. Maintenance will consist of the care and good repair of all Project features listed above including the irrigation vaults capped with covers, keeping all areas in good repair, and free of weeds and undesirable grasses and litter.

c. Agree to perform maintenance as required to maintain the safety and visual quality as the project was designed, and established at the completion of the Project.

d. Prior to commencing all planned maintenance work within the State's right-of-way, be responsible to notify the Safford District Maintenance Office.

e. Be responsible to submit request(s) to the State and obtain for any necessary "Encroachment Permit" through the State's Safford District Permits Office allowing the City rights-of-entry onto the State's right-of-way for all planned maintenance works of the Project.

### **III. MISCELLANEOUS PROVISIONS**

1. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance which shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty-days (30) written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds. Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Safford  
City Manager  
Box 272  
Safford, Arizona 85548-0272


10. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF SAFFORD**

By

  
\_\_\_\_\_  
RONALD M. GREEN  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By

  
\_\_\_\_\_  
SUSAN TELLEZ  
Contract Administrator

**ATTEST**

By

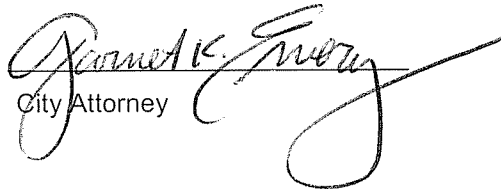
  
\_\_\_\_\_  
GEORGIA LUSTER  
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF SAFFORD

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 20<sup>th</sup> day of Jan, 2006.

  
City Attorney

**RESOLUTION NO. 06-005**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF  
THE CITY OF SAFFORD AUTHORIZING THE MAYOR TO  
EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH  
THE STATE OF ARIZONA, DEPARTMENT OF  
TRANSPORTATION, FOR THE CONSTRUCTION AND  
IMPROVEMENT OF SIDEWALK IMPROVEMENTS ALONG  
ROUTE 191 FROM ROUTE 70 TO DISCOVERY PARK BLVD**

**WHEREAS,** The City of Safford desires that the Arizona Department of Transportation construct sidewalk and multi-use path improvements along Route 191 using State and Federal funds for the safety and benefit of the residents of Safford as outlined in the intergovernmental agreement; and

**WHEREAS,** The Arizona Department of Transportation has agreed to seek funding from the Federal Highway Administration (FHWA) for the project in the estimated amount of \$489,417 and to provide State funds in the estimated amount of \$29,583; and

**WHEREAS,** The City of Safford has budgeted sufficient City funds to provide for maintenance of the sidewalk, multi-use path, and irrigation improvements; and

**WHEREAS,** The City of Safford agrees to maintain the completed improvements as outlined in the intergovernmental agreement; and

**WHEREAS,** The Arizona Department of Transportation has agreed to construct the project if approved by the FHWA as outlined in the contract identified as AG Contract No: KR004-1486TRN, for Project No: TEA-191-B-(001)A; and

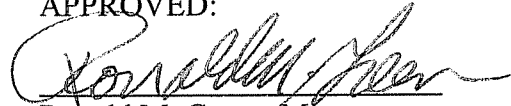
**WHEREAS,** The City of Safford agrees to enter into AG Contract No: KR004-1486TRN;

**NOW THEREFORE, BE IT RESOLVED,** by the Mayor and City Council of the City of Safford, Arizona, that the Mayor is authorized to execute an intergovernmental agreement with the State of Arizona, Department of Transportation, AG Contract No. KR004-1486TRN, for the construction and improvement sidewalks and the Multi-use Path along U.S. Route 191.

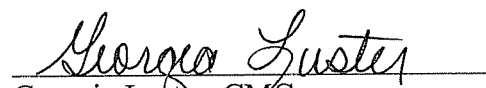
Resolution No. 06-005  
January 23, 2006  
Page 2

**PASSED, ADOPTED, AND APPROVED** by the Mayor and City Council of the City of Safford this 23<sup>rd</sup> day of January 2006.

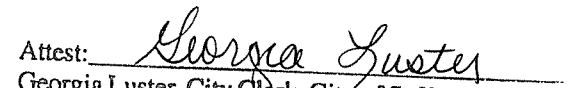
APPROVED:

  
Ronald M. Greep, Mayor

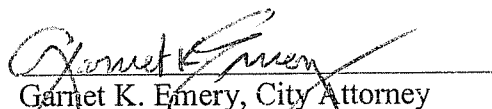
ATTEST:


  
Georgia Luster, CMC  
City Clerk

The foregoing instrument is a full, true and correct copy of the original on file in this office.

Attest:   
Georgia Luster, City Clerk, City of Safford, Graham  
County, State of Arizona.  
24-Jan-06  
Date

APPROVED AS TO FORM:

  
Garnet K. Emery, City Attorney

<p>TERRY GODDARD Attorney General</p>	<div data-bbox="750 65 939 247"></div> <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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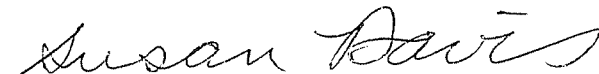
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0381TRN (**JPA 04-133**), an Agreement between public agencies, i.e., The State of Arizona and The City of Safford, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 6, 2006

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:945990  
Attachment